

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201506832	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 08/18/2014 5:30 PM	Location of Incident: [REDACTED]	Precinct: 46	18 Mo. SOL 2/18/2016	EO SOL 2/18/2016	
Date/Time CV Reported Sat, 08/15/2015 9:40 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 08/15/2015 9:40 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. An officer			046 PCT
2. POM Kevin Calvelli	10435	922057	046 PCT
3. SGT Francisco Hernandez	04408	936753	046 PCT
4. POM Thomas Casey	18749	950169	046 PCT
5. POM Nicholas Coumbouris	01354	933716	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer pushed § 87(2)(b) into a fence.	[REDACTED]
B. An officer	Force: An officer used a chokehold against § 87(2)(b)	[REDACTED]
C. An officer	Force: An officer restricted § 87(2)(b)'s breathing.	[REDACTED]
D.POM Kevin Calvelli	Discourtesy: PO Kevin Calvelli acted discourteously toward § 87(2)(b)	[REDACTED]
E.SGT Francisco Hernandez	Discourtesy: Sgt. Francisco Hernandez acted discourteously toward § 87(2)(b)	[REDACTED]
F.POM Thomas Casey	Discourtesy: PO Thomas Casey acted discourteously toward § 87(2)(b)	[REDACTED]
G.POM Nicholas Coumbouris	Discourtesy: PO Nicholas Coumbouris acted discourteously toward § 87(2)(b)	[REDACTED]

Case Summary

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) filed this complaint via the CCRB's online website on August 15, 2015. On August 18, 2014, § 87(2)(b) was allegedly assaulted by an unknown individual in the lobby of § 87(2)(b) in the Bronx, NY, where she resided. § 87(2)(b) ran outside where several other unidentified individuals allegedly assaulted her. An unidentified officer intervened, pulling § 87(2)(b) away from the alleged attackers. The unidentified officer allegedly pushed § 87(2)(b) into a fence (**Allegation A**) and then allegedly placed one of his hands on § 87(2)(b)'s throat (**Allegation B**). § 87(2)(b)'s breathing was allegedly restricted, and she said "I can't breathe," but the unidentified officer did not release his hold (**Allegation C**). Sgt. Francisco Hernandez, PO Kevin Calvelli, PO Thomas Casey, and PO Nicholas Coumbouris of the 46th Precinct were present at the scene of the incident. Also present was § 87(2)(b) the Director of Security for § 87(2)(b). The unidentified officer allegedly held § 87(2)(b) by the neck for fifteen minutes. During that time, § 87(2)(b) allegedly referred to § 87(2)(b) as a "mental patient" and all of the officers present allegedly laughed at § 87(2)(b) (**Allegations D, E, F, and G**). EMTs § 87(2)(b) and § 87(2)(b) arrived on the scene, determined § 87(2)(b) to be an Emotionally Disturbed Person, and transported her to § 87(2)(b) Hospital for psychiatric evaluation. She stayed overnight and was released from the hospital the following day. § 87(2)(b) was not arrested or issued a summons in regards to this incident.

The investigation was unable to obtain video of this incident because it had been deleted by the time the incident was reported.

Mediation, Civil, and Criminal Histories

- This case was deemed unsuitable for mediation because § 87(2)(b) was determined to be unfit to participate in mediation.
- On October 19, 2015 the Office of the Comptroller notified the undersigned investigator that § 87(2)(b) had not filed any notice of claim in regards to this incident.
- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is the ninth CCRB complaint filed by § 87(2)(b). Of the eight prior cases, § 87(2)(b) and two have been investigated. In CCRB case # 201408704 § 87(2)(b) alleged that officers made discourteous statements based upon her perceived mental condition. Those allegations were unsubstantiated. In CCRB Case # 201503356 § 87(2)(b) did not make any analogous allegations. § 87(2)(g)

- Sgt. Hernandez, who has been a member of the NYPD for ten years, has been a subject in two other CCRB cases with no substantiated allegations. § 87(2)(g)
- PO Calvelli, who has been a member of the NYPD for seventeen years, has been a subject in six previous CCRB cases. In CCRB case # 201013120 it was alleged that PO Calvelli instructed an individual to “get the fuck back.” That allegation was exonerated.
- PO Casey, who has been a member of the NYPD for four years, has been a subject in one previous CCRB case. § 87(2)(g)
- PO Coumbouris, who has been a member of the NYPD for eleven years, has been a subject in three previous cases. In CCRB case # 200514740 it was alleged that PO Coumbouris used a chokehold against an individual. That allegation was unfounded.

Potential Issues

- § 87(2)(b) who has a documented history of psychiatric health concerns, stated that she did not report this incident until a year after its occurrence because she had suppressed the memory as a result of post-traumatic stress disorder.
- The investigation was unable to obtain video of this incident, as it was deleted before § 87(2)(b) filed her complaint.
- The investigation was also unable to obtain any incident report pertaining to this incident. A subpoena for any existing report was mailed to § 87(2)(b) at the § 87(2)(b) security office, but § 87(2)(b) was unaware of the existence of an incident report.
- § 87(2)(b) did not know the names of any of the civilians she alleged assaulted her. Neither § 87(2)(b) nor any of the officers interviewed in connection with this case provided any information regarding § 87(2)(b)'s alleged attackers. Therefore, the investigation was unable to obtain statements from those individuals.

Pleading

- § 87(2)(b) (01. Board review) testified that there were four NYPD officers present during the incident and stated that the unidentified officer who allegedly pushed her into a fence, placed her in a chokehold, and restricted her breathing had blue or green eyes. She identified PO Calvelli by name but was unable to identify any of the other officers.
- As mentioned above, § 87(2)(b) reported this incident one year after the incident date. She also incorrectly listed the incident date as August 17, 2015. However, no AIDED for the reported incident date could be located. A search for any AIDED for § 87(2)(b) from August, 2014 revealed the correct incident date. The Department Advocate's Office informed the undersigned that Sprint reports are deleted after one year, and therefore the Sprint report for this incident was unavailable.
- As no Sprint report was available to the investigation, the undersigned initially interviewed PO Calvelli (02. Board review), who had previously testified (in regards to CCRB case # 201503356) that he had been present during an incident in which § 87(2)(b) was detained and transported to a hospital as an Emotionally Disturbed Person. PO Calvelli recalled that Sgt. Hernandez was present during the August 18, 2014 incident.

He could not provide Sgt. Hernandez's first name and stated that he believed Sgt. Hernandez was no longer assigned to the 46th Precinct. A CTS search revealed no Sgt. Hernandez assigned to the 46th Precinct. A copy of the roll call for the 46th Precinct, requested on September 2, 2015, was not received until November 9, 2015. The roll call identified Sgt. Francisco Hernandez of Patrol Borough Bronx. Sgt. Hernandez, who was interviewed on November 17, 2015 (03. Board Review), identified PO Casey and PO Coumbouris.

- It is undisputed among the four officers interviewed in regards to this incident that they were present, and it is undisputed among all parties, including § 87(2)(b) that there were four officers involved. However, none of the four officers present during the incident have blue or green eyes, or acknowledged using force against § 87(2)(b) or seeing any officer do so. For these reasons, Allegations A, B, and C are pleaded against "an officer" from the 46th Precinct.

Findings and Recommendations

Allegation A—Force: An officer pushed § 87(2)(b) into a fence.

Allegation B—Force: An officer used a chokehold against § 87(2)(b)

Allegation C—Force: An officer restricted § 87(2)(b)'s breathing.

§ 87(2)(b) testified that when she exited the elevator inside the lobby of § 87(2)(b) an unidentified man yelled angrily at her. She did not want to engage him and began to walk away, but he punched § 87(2)(b) on the left cheek. § 87(2)(b) fell to the ground and hit her head. The man punched her in the head either two or three more times while she was on the ground, and § 87(2)(b) swung upward, punching him in the chest either two or three times. § 87(2)(b) stood up and ran from the lobby. She saw an unidentified woman and approached her. The woman asked why § 87(2)(b)'s face was bloody, and § 87(2)(b) said that a man had assaulted her in the lobby. The woman told § 87(2)(b) to call the police.

At that moment § 87(2)(b) noticed that there was a marked RMP parked outside of the building. Near it stood PO Calvelli, whose name § 87(2)(b) learned at a later date, during an unrelated incident at the 46th Precinct stationhouse, and three other officers. § 87(2)(b) began to approach the officers, but as she did she encountered the mother and three sisters of the man who had struck her. They too began to hit § 87(2)(b) who yelled for help. While the struggle was taking place, an unidentified officer with blue or green eyes—who was not PO Calvelli—intervened, pulling § 87(2)(b) away from the other women. § 87(2)(b) did not see where the other officers were at that moment or what happened to them. The unidentified officer, gripping § 87(2)(b)'s arm, pushed her against a nearby fence. He then placed one of his hands on § 87(2)(b)'s throat and held her against the fence in that manner. § 87(2)(b)'s breathing was slightly restricted, and she said, "I can't breathe." The officer did not release her or move his hand at all. Two of the building's security guards, whose names § 87(2)(b) did not recall and whom she could not describe, held her arms in place. The unidentified officer held § 87(2)(b) by the neck, against the fence, for approximately 15 minutes. She repeated at least two more times that she was having difficulty breathing. § 87(2)(b) the building's security manager, was present outside the building and witnessed the force used against § 87(2)(b).

§ 87(2)(b) (04. Board review) testified that § 87(2)(b) became emotionally disturbed inside of her apartment. He did not know what behaviors she exhibited or who alerted him to her EDP status that day, but believed that she was involved in an incident with a family member. § 87(2)(b) stated § 87(2)(b) was prescribed medication for a psychiatric disorder and became uncontrollable when she did not take it. § 87(2)(b) met NYPD and security officers § 87(2)(b) but § 87(2)(b) did not know what brought her there. § 87(2)(b) did not know if § 87(2)(b) had been engaged in a physical altercation. § 87(2)(b) was present outside § 87(2)(b) with § 87(2)(b) who was yelling. He did not see any physical injuries on her person. Four NYPD officers in two RMPs responded to the scene of the incident, and an ambulance subsequently arrived on the scene. The NYPD officers attempted to convince § 87(2)(b) to get in the ambulance but she refused. An officer attempted to place § 87(2)(b) in handcuffs but she resisted by flailing her arms. The officers restrained her by holding her arms in place and then handcuffed her. Only then did § 87(2)(b) enter the ambulance. § 87(2)(b) testified that no member of the NYPD or security pushed § 87(2)(b) against a fence and that no member of the NYPD or security made contact with § 87(2)(b)'s neck or throat. § 87(2)(b) believed he was the only member of security present during the incident.

While PO Casey (05. Board Review) did not remember the incident, Sgt. Hernandez, PO Calvelli, and PO Coumbouris (06. Board Review) recalled their encounter with § 87(2)(b). PO Casey and PO Coumbouris' memo books (07. And 08. Board Review) revealed that the incident was reported as an assault in progress.

Sgt. Hernandez testified that when he and PO Calvelli responded to the incident location, § 87(2)(b) was standing on the sidewalk § 87(2)(b) and was not near a fence. She had been rear handcuffed, and a plainclothes member of § 87(2)(b) security was holding her by the arm. Sgt. Hernandez did not remember if any other members of RPT security were present. § 87(2)(b) was yelling angrily but Sgt. Hernandez did not remember exactly what she said. Sgt. Hernandez spoke with the security guard, who explained that § 87(2)(b) had trespassed inside a building at Richman Plaza and knew § 87(2)(b) to have an unspecified psychiatric condition. The security officer believed that § 87(2)(b) needed to go to the hospital. Sgt. Hernandez never learned that § 87(2)(b) had been involved in any sort of physical altercation prior to his arrival. PO Casey and PO Coumbouris were also present during the incident. Sgt. Hernandez believed based on his memo book entry that they arrived before he did, but he did not remember specifically. He did not remember what specific actions they took or statements they made on the scene. Sgt. Hernandez determined that § 87(2)(b) was an EDP, not a criminal, and called an ambulance for her. The ambulance responded shortly afterward; he did not remember exactly how long. § 87(2)(b) was placed inside the ambulance and transported to a hospital. Sgt. Hernandez then departed from the scene after the ambulance departed. Sgt. Hernandez did not push § 87(2)(b) into a fence, make contact with her neck or throat, or restrict § 87(2)(b)'s breathing. He did not witness any individual do so, did not learn that any individual had done so, and did not hear § 87(2)(b) complain that any individual had done so.

PO Coumbouris testified that PO Casey received a radio communication pertaining to an assault in progress in front of § 87(2)(b). They responded to the location and there saw § 87(2)(b). PO Calvelli, Sgt. Hernandez, and two armed plainclothes members of § 87(2)(b) security. PO Coumbouris was not familiar with the security officers. PO Coumbouris did not

remember what § 87(2)(b) was doing physically when he arrived and did not remember if she had been placed against a fence. § 87(2)(b) was under construction at the time of the incident and he believed there was a scaffold on the building, but he did not remember if there was a fence around it. One of the security officers explained that § 87(2)(b) had stated that she had been assaulted somewhere in the building. However, PO Coumbouris did not remember if § 87(2)(b) made any statements. PO Coumbouris did not see any injuries on § 87(2)(b)'s person or any evidence that she had been involved in a physical altercation. PO Calvelli was standing near § 87(2)(b) but PO Coumbouris did not remember if PO Calvelli was making any physical contact with her or if any other officer made physical contact with her. He also did not remember if she was handcuffed. However, PO Coumbouris never heard § 87(2)(b) complain of any injury. EMS had been called prior to PO Coumbouris' arrival. PO Coumbouris believed that Sgt. Hernandez and PO Calvelli had likely determined § 87(2)(b) to be an Emotionally Disturbed Person upon their arrival but he did not remember any conversation about why that decision was made. He did not remember if he witnessed § 87(2)(b) exhibit any behaviors consistent with those of Emotionally Disturbed Persons. When EMS arrived § 87(2)(b) was placed in the ambulance, and PO Casey accompanied her. PO Coumbouris resumed patrol. PO Coumbouris did not push § 87(2)(b) into a fence, make contact with her neck or throat, or restrict § 87(2)(b)'s breathing. He did not witness any individual do so, did not learn that any individual had done so, and did not hear § 87(2)(b) complain that any individual had done so.

PO Calvelli testified that when he and Sgt. Hernandez arrived at the incident location he saw that § 87(2)(b) was in handcuffs § 87(2)(b). A member of § 87(2)(b) security was holding the chain between the cuffs with one hand and was pushing § 87(2)(b) chest-first into a fence. There were approximately five other security officers standing nearby. PO Calvelli was not familiar with any of them and could not describe them. § 87(2)(b) was sweating profusely and cursing angrily at the security officers and the NYPD officers, but PO Calvelli did not remember what she said. She was not struggling physically. Neither the security officer nor any other individual ever made any contact whatsoever with § 87(2)(b)'s neck or throat. § 87(2)(b) never complained that anyone had made contact with her neck or throat and PO Calvelli did not see any sign that such contact had occurred. § 87(2)(b) did not have any visible injuries. Either PO Calvelli or Sgt. Hernandez asked what had taken place, and a security officer explained that § 87(2)(b) had been trespassing inside of 10 Richman Plaza. When a security officer had approached her, § 87(2)(b) had become violent, attempting to kick and spit on the security officers. A security officer had restrained her and brought her outside, and the police were called. PO Calvelli did not learn the details of how § 87(2)(b) was restrained. The security officers never told PO Calvelli that § 87(2)(b) had been engaged in a dispute or physical altercation with any other civilians. PO Calvelli and Sgt. Hernandez agreed that § 87(2)(b) should be taken to a hospital rather than arrested, and EMS was called. When the ambulance arrived, § 87(2)(b) was transported to § 87(2)(b) Hospital.

EMT § 87(2)(b) (09. Board review), one of the two responding EMTs, testified that when she and EMT § 87(2)(b) (10. Board review), her partner, arrived § 87(2)(b) was outside with several uniformed security officers and NYPD officers, but she did not remember how many. § 87(2)(b) was standing upright and was in handcuffs. § 87(2)(b) was agitated and was yelling angrily, protesting having been placed in handcuffs. EMT § 87(2)(b) did not see anyone making physical contact with § 87(2)(b).

§ 87(2)(b) A member of the NYPD told EMT § 87(2)(b) that § 87(2)(b) had become agitated, but she did not remember learning that § 87(2)(b) had been involved in a physical altercation. EMT § 87(2)(b) approached § 87(2)(b) and asked her what had happened, but § 87(2)(b) told her to leave her alone. § 87(2)(b) spoke loudly and angrily. She also cursed. However, EMT § 87(2)(b) did not remember specifically § 87(2)(b) said. She believed § 87(2)(b) might have said something like, “Don’t ask me any more fucking questions and get these handcuffs off of me.” EMT § 87(2)(b) did not remember ever being informed that § 87(2)(b) had resisted being placed in handcuffs. § 87(2)(b) was under construction at the time of the incident and had fences nearby. EMT § 87(2)(b) did not remember seeing § 87(2)(b) pushed against a fence and never learned that such an action was taken. EMT § 87(2)(b) did not remember any member of the NYPD or RPT security ever making physical contact with § 87(2)(b)’s neck or throat. She did not remember anyone ever making physical contact with § 87(2)(b) while she was on scene. She did not remember hearing § 87(2)(b) complain about having difficulty breathing or about any physical contact that was made with her person. EMT § 87(2)(b) believed that if she had witnessed any member of the NYPD or a security officer make contact with a patient’s neck it would be memorable to her.

EMT § 87(2)(b) EMT § 87(2)(b)’s partner, testified that he encountered § 87(2)(b) and four NYPD officers § 87(2)(b). He was unsure if any security officers were present. § 87(2)(b) was in handcuffs and two officers were restraining her by holding her arms in place. EMT § 87(2)(b) did not remember if § 87(2)(b) was struggling. The other two officers were standing nearby. EMT § 87(2)(b) could not describe any of the officers. § 87(2)(b) was under construction and there were fences around the building, but EMT § 87(2)(b) never saw § 87(2)(b) pushed or held against a fence. EMT § 87(2)(b) learned about an altercation that had led § 87(2)(b) to become agitated but he did not remember if she had been assaulted and did not remember her complaining of being assaulted. EMT § 87(2)(b) did not see any physical injuries on § 87(2)(b)’s person and never saw any member of the NYPD make any physical contact with § 87(2)(b) other than holding her by the arms. He did not see anyone make contact with her neck or throat. He did not hear her complain that she was having difficulty breathing and never learned that any officer made contact with her neck or throat.

§ 87(2)(b)’s medical records demonstrated that she complained of being punched in the face during an altercation with a civilian and of suffering from post-traumatic stress disorder. However, the records did not indicate that she made any complaint about being pushed into a fence, being placed in a chokehold, or her breathing being restricted.

Only PO Calvelli corroborated § 87(2)(b)’s allegation that she was pushed into a fence. However, he testified that it was a security officer, and not a member of the NYPD, who held her against the fence. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

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§ 87(2)(b), § 87(2)(g)

Allegation D—Discourtesy: PO Kevin Calvelli acted discourteously toward § 87(2)(b)

Allegation E—Discourtesy: Sgt. Francisco Hernandez acted discourteously toward

§ 87(2)(b)

Allegation F—Discourtesy: PO Thomas Casey acted discourteously toward § 87(2)(b)

Allegation G—Discourtesy: PO Nicholas Coumbouris acted discourteously toward

§ 87(2)(b)

§ 87(2)(b) testified that while she was being held against a fence, § 87(2)(b) told the NYPD officers that she was a “mental patient.” In response, the officers all laughed.

§ 87(2)(b) did not remember if there was any conversation between members of the NYPD and RPT security regarding § 87(2)(b)'s psychiatric condition. He stated that he did not refer to her as a “mental patient” that no one laughed at her.

Sgt. Hernandez, PO Calvelli, and PO Coumbouris testified that no one referred to § 87(2)(b) as a “mental patient” and that no member of the NYPD, or any individual present, ever laughed at her.

EMT § 87(2)(b) did not remember if anyone made any mention of § 87(2)(b)'s psychiatric condition. She did not remember any member of the NYPD, any security officer, or any other individual using the phrase “mental patient.” EMT § 87(2)(b) did not remember any of the officers or members of RPT security laughing at § 87(2)(b) and did not remember § 87(2)(b) ever complaining that anyone had laughed at her. Again, EMT § 87(2)(b) stated that if she had witnessed such behavior, it would have been memorable.

EMT § 87(2)(b) did not remember anyone making any reference to § 87(2)(b) having a psychiatric condition or disorder. EMT § 87(2)(b) was unsure if he heard anyone at the scene of the incident refer to § 87(2)(b) as a “mental patient.” He did not remember if he saw any officer or laugh at § 87(2)(b) or if § 87(2)(b) ever complained that any officers laughed at her. EMT § 87(2)(b) believed he would have remembered such behavior had he witnessed it.

§ 87(2)(b), § 87(2)(g)

Squad: 1

Investigator:	_____	_____	_____
	Signature	Print	Date

Pod Leader:	_____	_____	_____
	Title/Signature	Print	Date

Attorney:	_____	_____	_____
	Title/Signature	Print	Date